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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/645,646	08/24/2000	Shinichiro Hayashi	13041.5US01	3347
23552	7590	05/06/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			VO, HAI	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/645,646

Applicant(s)

HAYASHI ET AL. 

Examiner

Hai Vo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Claim 37 and 26 contains improper Markush language.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 2,4,6-26,30 and 37.

Claim(s) withdrawn from consideration: 27-29.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The proposed amendment "The porous structural material comprising an organic polymer" does not exclude an embodiment wherein the porous structural material comprises an organic binder. Accordingly, Noboru (JP 08-258493) reads on the claimed subject matter. The examiner maintains that Imashiro teaches filling the void portions of the melamine resin foam (example 2). The passage at column 2, lines 34-36 of Imashiro simply suggests that the melamine foam must have an open celled structure, not a closed cell structure to enable the cells to be filled with the coating. Applicant argues that Imashiro fails to provide any motivation to use a melamine resin foam as an elastic material for erasing, Imashiro fails to render claim 37 obvious. The arguments are not found persuasive since the melamine resin foam of Imashiro meets all the structural limitations as recited in the claims, it is not seen that the melamine resin foam would have performed differently than an eraser of the present invention in terms of elasticity for erasing. Like material has like property. This is in line with *In re Spada*, 15 USPQ2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. The same token is applied to surface hardness, sticking strength, and a coefficient of friction as recited in claim 22. Further, the examiner confirms that rejections of claims 6, 12 and 13 should be included in the art rejections over Imashiro while claims 12 and 13 is included in the art rejections over Noboru. The skeleton structure disclosed in both references implies the three-dimensional continuous network which reads on the claimed mesh structural material. Imashiro does not disclose the porosity of the melamine resin foam. However, such a variable would have been recognized by one skilled in the art as dependent upon the intended use of the product, such that high strength material would require a low porosity while low strength material would require higher porosity. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the melamine resin foam having the porosity instantly claimed motivated by the desire to impart the strength of the foam since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.



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